

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Mailed: May 12, 2003

Cancellation No. 92028142

Cancellation No. 92029614

IOB REALTY, INC.

v.

PATSY'S BRAND, INC.

PATSY'S BRAND, INC.

v.

IOB REALTY, INC.

**David Mermelstein, Interlocutory Attorney:**

This proceeding was suspended on May 15, 2001, pending resolution of a civil proceeding between the parties. On March 28, 2003, the Board issued an order resuming proceedings. The Board noted that the District Court had reached a decision in the civil matter, ordering cancellation of Registration No. 1,975,110, and entering an injunction against IOB Realty ("IOB"). The Board further noted that IOB had failed to respond to Patsy's Brand, Inc.'s ("Patsy's") motion for entry of judgment, and allowed IOB twenty days in which to demonstrate that it has not lost interest in this matter.

**Cancellation No. 92028142**

**Cancellation No. 92029614**

Now before the Board is IOB's response to the Board's show cause order, Filed April 25, 2003. As an initial matter, we note that by the terms of the Board's March 28, 2003, order, IOB's response was due on or before April 17, 2003. However, IOB's response indicates that it received the Board's order by way of its former attorneys. Under the circumstances, we will consider IOB's response, notwithstanding that it was filed eight days late. See, *Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997).

Further, it appears that IOB is no longer represented by its counsel of record, Darren W. Saunders of Pennie & Edmonds, LLP. Therefore, until further notice, correspondence in this matter will be sent to IOB to the attention of its Vice-President, Giovanni A. Brecevich.<sup>1</sup>

Turning next to the merits of the Board's show cause order, it is apparent from its response that IOB has not lost interest in this proceeding.<sup>2</sup> Accordingly, the show

---

<sup>1</sup> Mr. Brecevich does not appear to be an attorney. While parties are permitted to proceed *pro se* before the TTAB, IOB is reminded that these proceedings are legal in nature, and all parties before the Board will be expected to be familiar with the Board's rules and procedures. Many of the applicable rules, statutes, and other relevant materials may be found on the USPTO's web site at [www.uspto.gov/main/trademarks.htm](http://www.uspto.gov/main/trademarks.htm).

We note in particular, that IOB's filing did not include an appropriate certificate of service, see Trademark Rule 2.119, (or the optional, but recommended certificate of mailing, see Patent and Trademark Rules 1.8, 1.10), although Patsy's counsel was apparently sent a copy of the paper.

<sup>2</sup> The finding that IOB has not lost interest in this matter should not be construed as a ruling on the underlying merits of the case.

**Cancellation No. 92028142**

**Cancellation No. 92029614**

cause order is discharged, and judgment will not be entered against IOB on the basis of its loss of interest.

The larger question remains, however: What substantive effect, if any, does the judgment in the civil proceeding<sup>3</sup> (as modified by the court of appeals) have upon this matter? The parties are invited to submit briefs on this issue within THIRTY DAYS of the mailing date of this order. Briefs in response may be filed within the time specified in Trademark Rule 2.127(a). Upon consideration of the Briefs, the Board may enter judgment (or partial judgment) on behalf of either party, as appropriate. Otherwise, proceedings will be resumed and the matter set for trial on any outstanding issues.

This proceeding remains otherwise SUSPENDED.

.oOo.

---

<sup>3</sup> If either party has (or intends to) file a petition for *en banc* review, certiorari or otherwise seek reconsideration, review, or modification of the court of appeals' decision (as modified March 27, 2003), that fact should be brought to the Board's attention, in which case, this proceeding will be further suspended pending a final resolution of the civil proceeding.